No. 12588.

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

JUAN BAUTISTA PAIZ-NUNEZ,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

APPELLEE'S BRIEF.

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APPELLEE'S BRIEF.

Jurisdiction.

Appellee contends that the District Court had jurisdiction of the matter below by virtue of Title 18, Section 3231, United States Code, and by virtue of Title 8, Section 144, United States Code, and by virtue of the Indictment set out on pages 2 and 3 of the record herein.

ARGUMENT.

Summary.

To "bring" an alien "into the United States" neither begins nor ends with the mere crossing of the exact boundary line.

> "Successful to consummate the unlawful introduction of the prohibited aliens required more than the mere bringing of them across the line. It was necessary to evade the immigration officials by transporting them into the interior and concealing their identity." (*Lew Moy v. U. S.*, 237 Fed. 50, 52.)

As stated in appellant's brief, the question presented is whether or not the appellant did *bring* the aliens *into the United States* within the meaning of the statutes. The emphasis is added by appellee because it is the words "bring into the United States" appearing as they do in the statute (Title 8, Sec. 144, U. S. Code) and the indictment [R. p. 2] which must be interpreted by the court as they apply to the facts of this case.

That the attempt was to get the aliens "into the United States" and that they did get "into the United States" as the word "into" has been judicially interpreted (*U. S. v. Collins,* 254 Fed. 869, 872) and as it is used in common parlance, cannot* be denied. Their destination was Los Angeles [R. p. 5], and they were apprehended 40 miles north of Calexico [R. p. 6].

Also the driving performed by the defendant was that "relatively active conduct which affects a relatively passive immigrant . . ." which is set forth as being the meaning of "bring into" in *McFarland v. United States,* 19 F. 2d 805, at 806. As the *McFarland* case says of the words "bring into" "they are appropriate to one who transports . . ."

The position that appellant takes is, I take it, that since the "relatively active conduct" of the "one who transports"

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*Webster's New International Dictionary, 2nd Ed. INTO. Primarily, *into* denotes motion so directed as to terminate, if continued, when the position denoted by *in* is reached. Various applications are: *1.* Indicating place entered or that from the outside of which there is passing to the interior parts; usually following verbs denoting motion; as come *into* the house; one stream falls or runs *into* another; a journey *into* Spain; but used also where the idea of motion is only implied or suggested; as, foreign imports *into* America; the mountains merge *into* the plain. * * *

in this case occurred after the aliens had actually passed over the boundary line between Mexico and the United States, therefore, while he did "bring" them from Calexico to a point 40 miles north of Calexico and while they had at that time gotten "into" the United States, it was the aliens and not the defendant who had brought the aliens into the United States. This overlooks the previous negotiation between the alien and defendant in Mexico and the promptness with which their entering followed.

This boils down to saying that one can only "bring" an alien "into" the United States by performing the act of moving his body across the boundary line itself. Bearing in mind that a line has "length but no breadth or thickness" (*I. T. C. Rubber Co. v. Essex Rubber Co.,* 270 Fed. 593, 605) not only in its geometric sense but also in the ultimate extension of this argument, the appellant ends up with an absurd proposition. That is, that in spite of all the complex machinations that can go into smuggling operation, it is only the act of moving an alien's body for the distance of its own thickness as it passes over this mystic line that constitutes bringing the alien into the United States. If this act be missing, the smuggler did not "bring into the United States" the alien within the terms of the law.

He may move the alien from place to place below the border, locate the hole in the fence, drive him to the fence, point out the hole, watch him as he crawls through, drive around to the United States side and pick him up and drive him within the States to a point beyond the Immigration Service's check points, but so long as he

did not move him over that line he did not "bring" him "into the United States."

The *McFarland* case, which appellant relies on, itself disavows this theory of the test being whether the alien is moved over the line.

> "An alien may get into the United States in either of two ways: He may come up to the established point of inspection and submit himself for examination, and for admission or rejection, or he may endeavor to avoid this examination and come into or land in the United States surreptitiously. The statute has its full normal field of application, if it is restricted to entry at other than the inspection points, to that 'landing' or 'bringing' which escapes inspection. One who merely crosses the international line on a boat, and then crosses the dock to the immigration office for examination, has not come into the United States. He has neither been landed in, nor been brought in, under any accuracy of definition. He is subject to exclusion, not deportation. Even if he is then passed and walks in, so that he has fully entered, he has not been brought in. He is the actor, not the object of another's action." (*McFarland v. U. S.*, 19 F. 2d 805, 806.)

This passage, while it is preoccupied with the question of what degree of activity is required rather than the question of where the activity must occur, is typical of the interpretation of immigration statutes. They are interpreted in light of their obvious purpose, that is, the prevention of the establishment of residence by alien persons who for one reason or another are considered undesirable.

As far back as 1820, Marshall, sitting as Circuit Justice, decided that where negro seamen were transported into a United States port as part of the crew of a vessel with the intent that they return on that vessel, the captain of the vessel did not "bring" them "into the United States" as intended by a comparable statute.* (*Wilson v. United States,* Fed. Case No. 17,846.)

Exactly the same reasoning is followed under a similar statute by the Supreme Court in *Taylor v. United States,* 207 U. S. 120 at pages 124, 125 (Holmes, J.):

> "The phrase which qualifies the whole section is, 'bringing an alien to the United States.' It is only 'such' officers of 'such' vessels that are punished. 'Bringing to the United States,' taken literally and nicely, means, as a similar phrase in §8 plainly means, transporting with intent to leave in the United States and for the sake of transport—not transporting with intent to carry back, and merely as incident to employment on the instrument of transport . . ."

In *Ex parte Chow Chok, et al.,* 161 Fed. Rep. 627 at 630, 631, the Court interpreted the words "entry" and

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*". . . no master or captain of any ship or vessel, or any other person, shall import or bring, or cause to be imported or brought, any negro, mulatto, or other person of colour, not being a native, a citizen, or registered seaman, of the United States, or seamen, natives of countries beyond the Cape of Good Hope, into any port or place of the United States, which port or place shall be situated in any state, which, by law, has prohibited, or shall prohibit, the admission, or importation of such negro, mulatto, or other person of colour. . . ." Act of Congress of Feb. 28, 1803.

"entrance" in the Chinese Exclusion Act* words as susceptible of limitation to line crossing as "bring into," the Court states:

> " 'Enter' means *more than the mere act of crossing the border line.* Those who seek to enter in the sense of the law, and those the probing of the law seeks to prevent from entering, are those who come to stay permanently, or for a period of time, or to go at large and at will within the United States. These persons, on entering, were at once surrounded by officers, silently taken in charge, in effect arrested, and from that time effectually deprived of their liberty and prevented from going at large within the United States. They had no more actually entered the United States than has a Chinese person who escapes from a detention house while awaiting a determination of his right to enter, and were no more 'found unlawfully in the United States' within the true intent and meaning of the Chinese exclusion acts than would be a Chinese person, who, on being actually arrested and physically seized on the exact boundary line, should escape and succeed in running the distance of a mile into the United States and concealing himself for a day or week before being rearrested. . . ." (Emphasis supplied.)

It is to be noted that exactly the same view is taken under the immigration laws and one is held for "exclusion" rather than "deportation" even after he may be over the actual boundary line. In fact all inspection and interrogation at authorized inspection points is carried on appreciably within the boundary lines of the United States.

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*Act of July 5, 1884, 23 Stats. 117.

The reasoning of the 8th Circuit in *Lew Moy v. U. S.*, (1916), 237 Fed. 50 at 52, while applied to a charge of conspiracy to violate the comparable section of the Chinese Exclusion Act,* is as applicable to a substantive count. There the Court said, at page 52:

> "It is also urged that the conspiracy was at an end the instant the Chinese whose illegal entry was procured and facilitated were brought across the international boundary, and therefore the trial court erred in admitting in evidence the subsequent acts and declarations of one conspirator against the others. This is too narrow a view of the crime charged. Successfully to consummate the unlawful introduction of the prohibited aliens required more than the mere bringing of them across the line. It was necessary to evade the immigration officials by transporting them into the interior and concealing their identity. The subsequent assistance by the defendants to that end may well have been an essential part of the unlawful project."

And that reasoning is followed exactly in *Smith v. U. S.* (5 Cir.), 24 F. 2d 907, where on a charge of violating the section here being considered, the evidence was sufficient to hold a defendant who was shown merely to have waited near the point of illegal landing with an automobile, and thereafter to have driven some of the aliens to another point within the United States.

The facts set forth in Part II of appellant's argument (App. Br. p. 6) while not a part of the record are too well known not to be recognized by the Court and they

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*". . . bring by land into the United States." 23 Stat. 117, Sec. 11.

are the underlying facts which were true when this statute and its predecessor statutes were enacted. It is in light of these facts that the meaning of the words must be found.

A smuggler of dutiable goods has not accomplished his purpose when he throws the goods over the boundary line. A smuggler of aliens has no more accomplished his purpose when the alien is barely over the line into the United States. As appellant points out at page 7 of his brief, there is no trick to getting one's self into the states. It is "necessary to evade the immigration officials by transporting [the aliens] into the interior." *Lew Moy v. U. S., supra.*

These have always been the facts in the United States, and are, if anything, less true today than when this statute was first passed.

Respectfully submitted,

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